

AG Contract No. KR99 1094TRN  
ADOT ECS File No. JPA 99-79  
TRACS No.: H 5449 02D  
Section: I-10 @ Airport Road TI

**AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA AND  
DMB WHITE TANK, LLC**

THIS AGREEMENT is entered into 16 August, 1999,  
pursuant to the Arizona Revised Statutes, Section 28-401, as amended, between the STATE OF  
ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and  
DMB White Tank LLC, an Arizona limited liability company (the "Developer").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Developer is empowered to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Developer.

3. The Developer is developing a phased master planned community located north of Interstate 10 ("I-10") in the vicinity of Airport Road. The land use plan is designed with one of its primary access points at a proposed interstate interchange located at Airport Road and I-10 (the "Proposed Interchange").

4. The Developer desires to provide all necessary design and fund all costs associated with a Change of Access request to the Federal Highway Administration (the "FHWA"), including all design and environmental requirements required as part of the Change of Access request. Upon approval of the Change of Access request by FHWA, the Developer desires to fund and construct the Proposed Interchange. Nothing herein shall be construed to impose an obligation on the State to construct or in any way fund the Proposed Interchange.

5. Developer has assured the State that Developer has the ability and will continue to have the ability to provide the funds necessary to process the Change of Access request through the FHWA.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 23474  
Filed with the Secretary of State  
Date Filed: 08/16/99

Betty Bayless  
Secretary of State

By Vicky V. Greenwood

## II. SCOPE OF WORK

### 1. The Developer will:

a. Prepare to State and FHWA standards a Change of Access Report including design and other documentation required by the FHWA in connection with a Change of Access Report.

b. Be responsible for all costs associated with the design and environmental reports required in connection with the Change of Access Report, including but not limited to the following:

Alternatives Selection Report  
Design Concept Report  
Change of Access Report  
Environmental Studies/Documents  
Traffic Analysis Report  
AASHTO Report

c. Deposit \$30,000.00 in the State Treasurer's Office for the benefit of the Arizona Department of Transportation, which is the estimated cost of (1) the environmental studies/documents required as a part of the Change of Access Report, and (2) review of the Change of Access Report by the State (the "Review Costs").

d. Following the final disposition of the Change of Access Report by the FHWA, and a final accounting of the Review Costs by the State, be responsible for Review Costs in excess of \$30,000.00.

### 2. The State will:

a. Select and hire a State approved environmental consultant to prepare environmental reports required by the FHWA in connection with the Change of Access Report.

b. Review all design documents, environmental documents and other documents required by the FHWA in connection with the Change of Access Report and provide timely written comments to Developer.

c. Following the final disposition of the Change of Access Report by the FHWA, conduct a final accounting of the Review Costs and either invoice the Developer for the amount due to the State in excess of \$30,000.00 or return to Developer all unused funds.

## III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in full force and effect until final disposition of the Developer's Change of Access Report by the FHWA.

2. Should Developer fail to fulfill the obligations set forth in this Agreement or withdraw its Change of Access Report for whatever reason, Developer shall be responsible for all costs incurred by the State up to the time of withdrawal, unless the reason for Developer's failure or cancellation is due to the State's failure to comply with its obligations hereunder.

3. It is agreed between the parties hereto that Developer will pay all costs of whatever nature related to the Change of Access Report and the State will not incur or bear any costs whatsoever related to the Change of Access Report.

4. This Agreement shall become effective upon signature of the parties hereto.

5. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement.

7. In the event of any controversy which may arise out of this Agreement, the parties hereto agreed to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

State: Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, Arizona 85007

Developer: Eneas A. Kane, Esq.  
General Counsel  
DMB Associates  
4201 North 24th Street, Suite 120  
Phoenix, AZ 85016

With a copy to: Karrin K. Taylor, Esq.  
Biskind, Hunt & Taylor  
4201 North 24th Street, Suite 300  
Phoenix, AZ 85016

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**DMB WHITE TANK LLC, an  
Arizona limited liability company**

By: DMB REALCO LLC, an Arizona limited  
liability company, its Manager

By: DMB Associates, Inc., an Arizona corporation,  
its Manager

By: Oliver J. Fink, V.P.

**STATE OF ARIZONA  
Department of Transportation**

By: Victor M. Mendez  
Victor M. Mendez  
Deputy State Engineer

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RESOLUTION

BE IT RESOLVED on this 17th day of May 1999, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the DMB WHITE TANK, LLC for the purpose of defining responsibilities for conducting preliminary studies and reports associated with the proposed I-10 Airport Road traffic interchange.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.



DAVID R. ALLOCCO, P.E.  
Assistant State Engineer  
Engineering Technical Group  
for Mary E. Peters, Director

CONSENT OF MEMBERS

OF

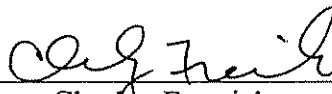
DMB WHITE TANK, LLC

The undersigned, being the sole member of DMB WHITE TANK, LLC, an Arizona limited liability company ("DMB WHITE TANK"), hereby authorizes and empowers DMB WHITE TANK to enter into an agreement with the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, for the purposes of funding all costs associated with a Change of Access request to the Federal Highway Administration, including all design and environmental requirements required as part of the Change of Access request.

DATED: July 21, 1999

DMB REALCO LLC, an Arizona limited liability company

By: DMB Associates, Inc., an Arizona corporation, Its Manager

By   
Charley Freericks  
Vice President

APPROVAL OF  
THE DMB WHITE TANK, LLC ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the DMB WHITE TANK, LLC and declare this agreement to be in proper form and within the powers and authority granted to the Company under the laws of the State of Arizona.

DATED this 21st day of July, 1999.

  
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Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

JANET NAPOLITANO  
ATTORNEY GENERAL

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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR99-1094TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED August 6, 1999.

JANET NAPOLITANO  
Attorney General

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:et/81596

Enc.